

22718



2-8-08

Certificate of Express or First-Class Mailing
I hereby certify that I have deposited this correspondence with the US Postal Service as first-class or, if a mailing-label number is given below, as express mail addressed to Comm. of Patents, Box 1450, Alexandria, VA 22313-1450
on FEB 06 2008

EM155714830

E. Rey

IN THE U.S. PATENT AND TRADEMARK OFFICE

Inventor Patrick REINHOLD et al
Patent App. 10/726,817
Filed 2 December 2003 Conf. No. 4112
For CONTINUOUS PROCESS FOR PRODUCTION OF STEEL PART
WITH REGIONS OF DIFFERENT DUCTILITY
Art Unit 1742 Examiner Roe, J
Hon. Commissioner of Patents
Box 1450Appealed 01-Oct-07
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR 41.41

Now come appellants by their duly authorized attorney and submit their reply brief under the provisions of 37 CFR 41.41.

The Examiner's Answer states that "because the apparatus disclosed by Harsch ('716) would have all of the components required by the instant claim, the apparatus disclosed by Harsch ('716) would be capable of performing the same process." Thus it is the examiner's position that functional statements in "means for" clauses in apparatus claims carry no weight. If this is indeed the law, then "means for" expressions are meaningless. In other words the statement in 35 USC 112 that "An element in a claim ... may be expressed as a means .. for performing a specified structure without the recital of structure, material, or acts in

support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."

It is respectfully submitted that the examiner has no authority to ignore the statute in formulating a rejection. When a "means for" element in a claim clearly recites a specified function, the examiner must take that function into account. Merely saying that function could perhaps be performed by a known apparatus is not the basis of a rejection. Rule 112 is still in force and should be followed.

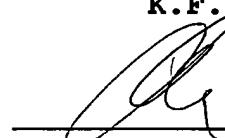
Harsch discloses an oven subdivided in the region in which the workpiece is treated into a succession of zones in each of which a different temperature is maintained. In Harsch the workpiece is fully treated in each of the zones before passing to another zone. Thus this reference does not teach the specified step or function of displacing the workpiece "with a region of the workpiece moving through the one zone and another region of the workpiece moving exclusively through the other of the zones such that the regions are heated to different temperatures." If this language of the claim is not to be ignored, then the instant invention is clearly different from the Harsch system where the entire workpiece is heated to the same temperature in each zone.

It should be noted that Harsch does indeed have lateral air-return channels that are separated from the central workpiece-treating zone by longitudinal partitions. No workpiece is every moved in these air-circulating channels, and there is in fact no discussion whatsoever of differentially tempering a workpiece in Harsch.

Upholding the examiner's rejection would be tantamount to declaring 35 USC 112 null and void with respect to "means for" expressions in apparatus claims.

Reversal of the rejection is clearly in order.

Respectfully submitted,
K.F. Ross P.C.



by: Andrew Wilford, 26,597
Attorney for Applicant

06 February 2008
5683 Riverdale Avenue Box 900
Bronx, NY 10471-0900
Cust. No.: 535
Tel: 718 884-6600
Fax: 718 601-1099
Email: email@kfrpc.com

Enclosure: